APPENDIX A

Statutes

Act of June 7, 1924, ch. 320, Title I, 16, as amended 43 St. 612. Appropriations for Mil. & Naval Ins: App.

38 USC 442: All sums appropriated prior to June 7, 1924, for the military and naval insurance appropriation and all premiums collected for the yearly renewable term insurance provided by the provisions of subchapter III of this chapter deposited and covered into the Treasury to the credit of this appropriation, shall, where unexpended, be made available for the Veteran's Administration. All premiums collected after June 7, 1924, for the yearly renewable term insurance provided by the provisions of said subchapter shall be deposited and covered into the Treasury for the credit of this appropriation. Such sum, including all premium payments, is made available for the payment of the liabilities of the United States incurred under contracts of yearly renewable term insurance made the provisions of said subchapter, including the refund of premiums and such liabilities as shall have been or shall hereafter be reduced to judgment in a district court of the United States or in the United States District Court for the District of Columbia. Payments from this appropriation shall be made upon and in accordance with the awards by the Administrator of Veterans' Affairs.

Act of June 7, 1924, ch: 320, Title I, 19, as amended 43 St. 612. Actions on Claims; Jurisdiction; Procedure.

38 USC 445: In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the United States District Court for the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them

resides, and jurisdiction is conferred upon such courts to hear and determines all such controversies. . . .

Act of June 25, 1948, c. 646, 62 St. 974. Payments of Judgments Against the United States.

28 USC-2414: Payment of final judgments rendered by a district court of the United States shall be made on settlements by the General Accounting Office. Whenever the Attorney General determines that no appeal shall be taken from a judgment against the United States or that no further review will be sought from a decision affirming same, he shall so certify and the judgment shall be deemed final.

Act of March 3, 1933, c. 212, Title II, Sec. 13, 47 St. 1516. Offsets Against Judgments Against United States.

31 USC 227: When any final judgment recovered against the United States duly allowed by legal authority shall be presented to the Comptroller General of the United States for payment, and the plaintiff therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Comptroller General of the United States to withhold payment of an amount of such judgment equal to the debt thus due to the United States; and if such plaintiff assents to such set-off, and discharges his judgment or an amount thereof equal to said debt, the Comptroller General of the United States shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Comptroller General of the United States shall withhold payment of such further amount of such judgment as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Comptroller General of the United States to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted

to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Comptroller General of the United States with 6 per centum interest thereon for the time it has been withheld from the plaintiff.

Federal Rules of Civil Procedure. Under Authority of Act of June 19, 1934. USC 28, 2072. Formerly 723b, and Other Grants of Rule-Making Power.

No. 1—They (the Rules) shall be construed to secure the just, speedy and inexpensive determination of every action.

No. 8(f)—Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

No. 81(6b)—Scire facias and Mandamus. The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate motion under the practice prescribed in these rules.

APPENDIX B

Opinions

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12822

THE CITIZENS BANK AND TRUST COMPANY OF BLOOMINGTON, INDIANA,

Administrator d.b.n. of the Estate of Joseph Kelly Kerr, deceased, APPELLANT,

v.

THE UNITED STATES OF AMERICA, APPELLEE.

Appeal from the United States District Court for the District of Columbia

Decided December 20, 1956

Mr. Camden R. McAtee for appellant.

Mr. Harold H. Greene, Assistant United States Attorney with whom *Messrs. Oliver Gasch*, United States Attorney, and *Lewis Carroll*, Assistant United States Attorney, were on the brief, for appellee. *Messrs. Leo A. Rover*, United States Attorney at the time record was filed, and *Carl W. Belcher*, Assistant United States Attorney, also entered appearances for appellee.

Before BAZELON, WASHINGTON and DANAHER, Circuit Judges.

PER CURIAM: Appellant complains of the dismissal of its suit against the United States filed December 4, 1954, and based upon a judgment entered in appellee's

favor as of June 30, 1942. The original cause of action arose on a policy of war risk insurance. See *United States v. Citizens Loan Co.*, 316 U.S. 209 (1942).

Various contentions have been made before us, chiefly concerning the statute of limitations of the District of Columbia, D. C. Code § 15-101 (1951), and the limitation contained in the World War Veterans' Act of 1924, 38 U. S. C. § 445 (1952). At the outset, however, doubt appears as to whether the Government has consented to be sued on the 1942 judgment. Appellant urges that the statute making funds available for payment on insurance claims, 38 U. S. C. § 442, evidences congressional intention to allow the instant suit. This statute is not, however, a specific appropriation to pay a judgment already entered but is rather a designation of a fund out of which such judgments as may thereafter be entered (on insurance claims) shall be paid. Thus, this case differs from those in the Court of Claims in which suits against the United States on prior judgments have been allowed, for in each case there had been a specific appropriation after the first judgment.[1] We need not, however, decide whether an appropriation in advance of a judgment constitutes consent to a later suit upon that judgment, for in any event this suit was properly dismissed for failure to state a claim on which relief could be granted. Petitioner seeks nothing more than a reaffirmation of his first judgment. In this respect the case is similar to *Hetfield v. United States*, 78 Ct. Cls. 419, 422-23 (1933). There the action was dismissed both because there had been no appropriation and because plain-

[1] See O'Grady v. United States, 8 Ct. Cls. 451, *affirmed*, 89 U.S. 641 (1874); Eastport Steamship Co. v. United States, 130 F. Supp. 333 (Ct. Cls. 1955); Stewart & Co. v. United States, 71 Ct. Cls. 126 (1930); Benedict v. United States, 66 Ct. Cls. 437 (1928); Helvetia Milk Condensing Co. v. United States, 3 F. Supp. 662 (Ct. Cls. 1933); Brown v. United States, 6 Ct. Cls. 171 (1870); Weld v. United States, 23 Ct. Cls. 126, *affirmed*, 127 U.S. 51 (1888).

tiff had put no question in issue other than that concluded by the prior judgment.[2] In appropriate cases, of course, mandamus may lie against Government officials to compel performance of their duty to honor a judgment of the present sort.[3] But this suit is not brought in mandamus. It is a suit against the United States in which no issue not already litigated has been raised. That being so, we affirm the judgment of the District Court, but solely on the ground we have stated, *Jones* v. *United States*, 97 U.S. App. D.C. 81, 228 F. 2d 52 (1955), and do not reach the other points in the case.

So ordered.

DANAHER, *Circuit Judge*, concurring: We are in complete agreement upon the foregoing opinion. Since we are disposing of the case on the ground mentioned above, we did not reach yet other questions. In what I now add, I speak only for myself.

The record had not disclosed to us why the Administrator and the Comptroller General failed to pay the appellant's judgment, entered in accordance with the Supreme Court's mandate, in 1942. The trial judge dismissed the action pursuant to the Government's reliance upon a District of Columbia statute, D. C. CODE § 15-101 (1951) which sets up a 12-year limitation. I would rather we were free to say that, in the circumstances the stat-

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[2] In each of the cases cited in note 1 there was a particular reason to justify the second suit (apart from the basic reason that the first judgment was unpaid). Thus, in *Eastport* and *Stewart* the administrative officer charged with payment was asserting a counterclaim, in *Brown, O'Grady* and *Weld* the officer had withheld from payment a deduction alleged to be improper, and in *Benedict* there was a dispute as to the amount of interest due on the initial judgment.

[3] Hines v. United States, 70 App. D.C. 206, 105 F.2d 85 (1939); Hammond v. Hull, 76 U.S. App. D.C. 301, 131 F.2d 23 (1942), *cert. denied*, 318 U.S. 777 (1943).

ute has no application,[1] and hence, had there been a claim against the proper parties seeking performance by them of "a purely ministerial duty,"[2] the statute would have been no bar. Could we thus say that the 1942 judgment is "final",[3] and even if treated as a "claim or demand,"[4] it had been timely filed, the way to a possible remedy would be indicated. That it was so filed in proper time is clear, indeed counsel fees amounting to 10 per cent of the judgment actually had been paid, yet the veteran's beneficiaries, or his estate, have been denied the benefits of the veteran's contract with his Government.[5]

So, considering that the judgment is valid but dormant, appellant would be free to seek its remedy[6] in a suit on that judgment, no longer open to defenses which might have been raised in the original action, but with relief possibly available in "the exercise of a sound judicial discretion and upon equitable principles . . . as not embraced within statutes of limitation applicable to ordinary actions, but as subject to the equitable doctrine of laches."[7]

But as I say, we did not reach such questions.

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[1] Since by its very terms it treats of judgments to be enforced "by execution issued thereon," and the law makes no provision for issuance of execution against the Government. Cf. F.H.A. v. Burr, 309 U.S. 242, 250 (1940).

[2] Hines v. United States, 70 App. D.C. 206, 214, 105 F. 2d 85, 93 (D.C. Cir. 1939).

[3] Agreeably to the statute, 28 U.S.C. § 2414 (1952), since the Attorney General had certified that no appeal would be taken.

[4] 31 U.S.C. § 71a (1952).

[5] Cf. Lynch v. United States, 292 U.S. 571, 579 (1934).

[6] As in Hines v. United States, *supra* note 2; cf. Hammond v. Hull, 76 U.S. App. D.C. 301, 303, 131 F. 2d 23, 25 (D.C. Cir. 1942), *cert. denied*, 318 U.S. 777 (1943).

[7] Arant v. Lane, 249 U.S. 367, 371 (1919); cf. Dollar v. Land, 87 U.S. App. D.C. 214, 226, 184 F. 2d 245, 257 (D.C. Cir. 1950), *cert. denied*, 340 U.S. 884 (1950).

Judgment of Court of Appeals.

(R. 12)

[Caption here omitted.]

Appeal from the United States District Court for the District of Columbia.

Before Bazelon, Washington and Danaher, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: December 20 1956.

Per Curiam.

Separate concurring opinion by Circuit Judge Danaher.

(copy)